

*Before the*  
POSTAL REGULATORY COMMISSION  
WASHINGTON DC 20268-0001

Modern Rules of Procedure  
for the Issuance of Advisory Opinions  
in Nature of Service Proceedings

Docket No. RM2012-4

PUBLIC REPRESENTATIVE'S REPLY COMMENTS

(August 28, 2013)

Respectfully submitted,

s/Patricia A. Gallagher

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#### Attachments

Attachment A: Excerpt from Congressional Record (H.R. 17070 Debate)

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## PUBLIC REPRESENTATIVE'S REPLY COMMENTS

### I. INTRODUCTION AND SUMMARY

These Reply Comments are submitted pursuant to Commission Order No. 1738 in the undersigned's capacity as the designated Public Representative. They address several issues in the initial round of comments that have special significance to the interests of the general public in N-Cases. They do not, for the most part, reiterate positions or suggestions expressed in the initial set of Public Representative's Comments filed July 29, 2013, such as support for continuation of limited participant status or an equivalent.

A fundamental issue at this stage of the rulemaking is the emergence of a difference of opinion over the permissible scope of N-Cases. The Public Representative's position is that nothing in the legislative history of the Postal Reorganization Act of 1970 (PRA) or the Administrative Procedure Act (APA) precludes the Commission from limiting the scope of consideration of a section 3661 request primarily to "the four corners" of a Postal Service proposal. This is especially the case where, as in the proposed rule, issuance of a responsive order (in the form of an advisory opinion) contemplates completion of proceedings within a relatively short time frame.

At the same time, the Commission has leeway to entertain reasonable modifications to the Postal Service's proposal; it is major departures and wholesale alternatives that are beyond the legitimate scope of section 3661. The latter cannot be "bootstrapped" into the ambit of section 3661 merely because this provision incorporates by reference two key due process provisions of the Administrative Procedure Act (APA). Instead, sections 556 and 557 of the APA can be seen, in large part, both as a means of testing the strength of the Postal Service's support for a

proposed service change and as an opportunity for interested persons to address the adequacy of that support.

The initial round of comments also reveals the need for clarification of the Commission's expectations about the pre-filing stage, without regard to whether the Commission accepts the Public Representative's suggestion that the prefiling stage be conducted under the formal umbrella of a docketed proceeding. This is because the Postal Service's comments indicate that it views the proposed prefiling stage as "merely formalizing" existing practice.<sup>1</sup> Postal Service Comments at 8. The Public Representative's understanding is that the Commission intends the prefiling stage to take on a more significant role in the future.

Two additional issues pertain to the overall approach the proposed rulemaking takes to discovery (Commission-led versus party-led) and the impact of several specific discovery proposals on participants' rights and responsibilities. The Public Representative's position is that there are several approaches to discovery that would be consistent with the interests of the general public in N-Case proceedings, including Commission-led discovery at all or some stages. Similarly, specific tools — limits on interrogatories and the length of briefs — can be consistent with the interests of the general public if they preserve participants' legitimate rights. The objective should be balancing competing interests in ways that support a meaningful opportunity for a hearing on the Postal Service's proposal and issuance of a timely, well-informed advisory opinion.

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<sup>1</sup> For readability, the Reply Comments place short form citations in the text and, upon initial citation, place a full citation in a related footnote. The full citation in this instance is to United States Postal Service Initial Comments, July 29, 2013, at 8.

## II. LEGISLATIVE HISTORY SHEDS SOME LIGHT ON THE SCOPE OF N-CASES AND THE COMMISSION'S ROLE

### A. Scope of N-Case Proceedings

The fact that the initial round of comments in this rulemaking reveals that questions still arise about the scope of section 3661, more than 40 years after the enactment of the PRA, is surprising in some respects, yet understandable in others.

One reason continuing “scope” questions are surprising is that section 3661 has been a standard component of the postal regulatory framework since enactment of the Postal Reorganization Act of 1970 (PRA). In fact, as Valpak — a longtime participant in Commission proceedings correctly observes — the Postal Accountability and Enhancement Act (PAEA) of 2006 made nothing more than a conforming nomenclature change to the text of this provision to reflect a change in the Commission’s name. Valpak Comments at 5.<sup>2</sup> In short, in all material respects, section 3661 still reads the way it did when the PRA was enacted, and still consists of three logically-related paragraphs.

The Commission and others involved in this proceeding know are aware that the first paragraph of section 3661 imposes a fundamental, ongoing, obligation: “The Postal Service shall develop and promote adequate and efficient postal services.” 39 U.S.C. 3661(a). They also know that the second paragraph addresses the possibility that notions of “adequate and efficient postal services” may evolve over time, and that section 3661 ensures that the Postal Service need not to be held captive to a status quo that is no longer allows it to provide services consistent with the policies of title 39. Instead, section 3669(b) acknowledges the inevitability of changed circumstances and addresses the mechanics and timing of ensuing proposals by providing:

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<sup>2</sup> Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Initial Comments on Notice of Proposed Rulemaking, July 29, 2013, at 5.

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a *proposal*, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission *requesting an advisory opinion on the change*.

39 U.S.C. 3661(b). (Emphasis supplied.)

In short, the operator seeks from the regulator an advisory opinion finding that the *operator's* proposal for change is consistent with applicable policies.

The third paragraph addresses what is, to a large extent, of immediate interest here: the Commission's responsibilities upon receipt of a request for an advisory opinion and the rights of all interested parties, including the Postal Service. It provides:

The Commission shall not issue its opinion on any proposal until an opportunity for a hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.

39 U.S.C. 3661(c).

Debate over the scope of section 3661 is also surprising because section 3661, on its face, repeatedly refers to the Postal Service's proposal and the change the Postal Service's proposal encompasses. Section 3661 does not expressly refer to consideration of a Commission proposal, nor does it refer to another participant's proposal. This stands in sharp contrast to PRA-era rate cases, which referred to Commission rate recommendations, and included mail classification changes, which the Commission could initiate on its own or in response to a participant's proposal. In short, PRA-era rate and classification cases can be seen, by statutory design, as an opportunity for a broad forum on Postal Service proposals. A reading of section 3661

shows that nationwide service changes, on the other hand, were intended to be defined largely by the Postal Service.

Moreover, the adjective “any” before the word “proposal” in section 3661 can be viewed as limited to “any Postal Service proposal,” not to “any proposal” that might arise in the postal community as a way to spend (or save) money. This means the possibility that the Commission would or *must* entertain service change proposals that are major departures from the Postal Service’s proposal can only arise if section 3661’s incorporation of the APA’s sections 556 and 557 procedures so requires. The following discussion demonstrates that this is not the case.

First, a review of postal legislative history leads to the conclusion that there is not as much discussion of N-Case proceedings as those searching for a definitive answer might like. Nor does it appear that there is much discussion in the APA’s legislative history of what a “direct case” encompasses.<sup>3</sup> One conclusion is that a participant’s direct case, in the context of a section 3661 proceeding, is mainly to address “the result” the Postal Service seeks, which is a favorable advisory opinion, not to present an independent proposal.

In addition, postal legislative history reveals that one of the service change provisions considered during the debate over postal reform (set out in Attachment 1) affirmatively provided an opening for at least limited modification of proposed service change (in section 1255(c) of H.R. 17070). Section 1255 also provided a detailed list of the rights and responsibilities of the Postal Service, the “Rate Board,” and interested parties. However, the context was a rulemaking, as section 1255 (b) provided that service change proposals were to be considered as proposed rules and the Rate Board was to be considered an “agency” for purposes of referenced APA provisions.

A fair reading of this provision, had it been adopted, is that revisions qualifying as “modifications” could have been proposed, mid-stream, by the Postal Service, by the Commission, or participants in a formal proceeding. However, as eventually enacted,

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<sup>3</sup> See Attachment 2 for a page with citations to the U.S. Department of Justice’s compilation of an APA legislative history. The page on the Justice Department’s website includes active links to reference materials.

the PRA provision on nationwide service changes (embodied in section 3661) eliminated any reference to modifications of a Postal Service and made a number of other significant changes, including substituting the “trial-type” provisions of 5 U.S.C. 556 and 557 for the notice-and- comment rulemaking approach in superseded section 1255 and other service change provisions that were precursors to section 3661.

## B. Commission’s Role in N-Cases

A plausible conclusion is that Congress attached the APA’s “556-557” procedures to ensure that the Postal Service’s support would be consequential, not pretextual or flimsy, and that a participant would have an opportunity to present what the APA refers to as a “direct case” on the crux of the matter: the consistency of the proposed service change with the policies of title 39. Not the right to present a “direct case” on an independent proposal that differs in major ways from the Postal Service’s proposal or is a wholesale alternative.

In short, the APA is a broad statute that largely applies government wide, and its due process guarantees provisions are to be applied in the context of the specific agency business at hand. The APA is to facilitate the conduct of agency business, not unduly hamstring it. As can be seen by a reading of the organic postal statute, the “business at hand” in a section 3661 proceeding is the Commission’s relatively prompt issuance of an advisory opinion on the Postal Service’s proposed change, following an APA-compliant opportunity for a hearing.

To fulfill this obligation, the APA gives the Commission considerable leeway to formulate rules to ensure issuance of an opinion that will be both timely and useful to the Postal Service; its provisions do not independently “reach in” and wrest control of the statutorily-defined scope of a proceeding. Thus, neither section 3661 nor the APA mandates that the Commission turn every N-Case into an industry-wide forum (or omnibus proceeding) on other ways the Postal Service should manage its service obligations.



At the same time, it is understandable that some may consider PRA-era rate and classification cases as a “model” or template for N-Cases or point to the Commission’s longstanding reliance on a broad set of rules of general applicability for various proceedings as support for a “kitchen sink” approach to N-Cases. However, as shown above, the service change approach that was embodied in section 3661 and the APA provisions incorporated by reference allow the Commission to limit the scope of a N-Case to the Postal Service’s proposal and, in its discretion, to consider modifications that do not amount to major departures or wholesale alternatives.

### III. EXPECTATIONS FOR THE PRE-FILING STAGE NEED CLARIFICATION

The Commission’s proposed rule establishes a pre-filing stage. The Public Representative’s impression is that the Commission expects this stage to provide an opportunity for preliminary discovery and negotiation before an N-Case is filed *beyond* that which apparently has occurred in the past via informal discussions and press releases.<sup>4</sup> The National Newspaper Association (NNA), moreover, suggests that the Commission require the Postal Service to provide a policy or road map witness, as it did in some major pre-PAEA cases.<sup>5</sup> NNA Comments at 7.

In contrast, the Postal Service’s Comments indicates that it does not share these views about the pre-filing stage, as it states it “is not necessary for the proposed stage to require disclosure of information or procedures different from current Postal Service practice.” United States Postal Service Initial Comments at 8.

The Commission’s expectations of the scope and consequences of a pre-filing stage warrant clarification. In particular, the final rule should provide the Postal Service and participants with a clear understanding of their rights and responsibilities during this stage and the substantive relationship of this stage of the proceeding to other stages.

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<sup>4</sup> Because the pre-filing stage as proposed seemed to have due process implications with respect to the rights of participants in the formal stage of an N-Case proceeding, the Public Representative suggested establishing the pre-filing stage under the umbrella of a formal docket. The Public Representative continues to support that approach.

<sup>5</sup> Comments of National Newspaper Association, Inc., July 29, 2013, at 7.

#### IV. OVERALL APPROACHES TO DISCOVERY CAN DIFFER, YET STILL BE CONSISTENT WITH THE INTERESTS OF THE GENERAL PUBLIC

Some commenters address, in different contexts, the proposed rule's expressed preference for party-led discovery over Commission-led discovery in all instances. The Postal Service, for example, reiterates that it considers Commission-led discovery — at all applicable stages of an N-Case — preferable to party-led discovery for several reasons, including its belief that the former approach is more consistent with the Commission's stated goal of completing consideration of an N-Case within 90 days. Postal Service Comments at 12-18. The Greeting Card Association suggests, in connection with its observations about numerical limits on interrogatories, that a participant file a motion to file follow-up interrogatories, with the Presiding Officer making a decision on whether the interrogatories will be allowed.<sup>6</sup> GCA Comments at 2.

Given the comments filed by the Postal Service and the GCA addressing the merits of a Commission (or Presiding Officer's) role in all or some aspects of discovery, the Public Representative considers it appropriate to clarify that it believes Commission-led discovery can be fully consistent with the interests of the general public in N-Cases. The key issue with respect to any discovery approach is whether participants have a realistic opportunity to pursue legitimate avenues of inquiry. Party-led discovery, as the Postal Service observes, contributes to the length of time needed to complete an N-Case, and thereby facially conflicts with expressed interest in expedition. On the other hand, Commission-led discovery burdens the agency with mixed legal and administrative tasks and may leave participants feeling less than satisfied with their options.

The GCA proposal to require followup interrogatories to be filed by motion is a suggestion well worth considering, especially if the final rule retains the proposed numerical limit of 25 interrogatories per case (addressed separately below).

#### V. COMMENTS SUPPORT REVIEW OF OTHER CASE MANAGEMENT TOOLS

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<sup>6</sup> Initial Comments of the Greeting Card Association, July 29, 2013, at 2.

#### A. Numerical Limits on Interrogatories

The initial round of comments indicates that many see the proposed limit of 25 interrogatories as problematic and, to some extent, susceptible to evasion. *See, for example*, GCA Comments at 2. And Valpak opposes any limit on interrogatories unless limits on scope of the Postal Service's proposal and length of its filing are also imposed. Valpak Comments at 8.

The National Newspaper Association (NNA), like the GCA, opposes numerical limits on followup questions. NNA Comments at 6. NNA supports at least one set of followup questions without imposition of a numerical cap. *Id.* GCA, as noted above, suggests a permissive approach over a by-right approach, with a participant filing a motion with the Presiding Officer. GCA Comments at 2.

Consideration of points raised in the initial comments leads the Public Representative to urge the Commission to revisit its proposed across-the-board numerical limit on interrogatories, especially as this limit affects followup interrogatories and applies case wide, rather than by witness. Numerical limits can play a role in expediting N-Cases, but a more realistic approach seems to be warranted in light of the concerns commenters identify.

#### B. Deadlines

The proposed rules, in the interest of expedition, include some extremely short deadlines. NNA, for example, notes that tightened deadlines, particularly when shortened to only two days as in the case of motions to strike, could toll over the weekend. NNA Comments at 6. The Public Representative agrees that meeting some deadlines are likely to pose considerable difficulty, and encourages the Commission to consider whether adding a day or two might foreclose the need for motion practice. Consideration might also be given to sanctioning a "grace period" of a day or two, during which a late-filed response to an interrogatory would be accepted without the need for an accompanying, on the condition that the covering page certifies that the participant filing the interrogatory does not object.

### C. Clarifications or Other Changes

In connection with interrogatories, GCA also suggests that the Commission reconsider the proposed “logically and factually” related premise for subparts to primary interrogatories. GCA Comments at 2-5. Given the significance of subparts under the proposed numerical limit (they do not count toward it), the Public Representative encourages the Commission to consider GCA’s suggested alternative.

NNA, as noted above, suggests that the Commission might consider requiring the Postal Service to provide a policy or “road map” witness during the prefiling stage. NNA Comments at 7. The Public Representative sees how road map testimony could be helpful at the stage NNA identifies. In addition, the Public Representative suggests that road map testimony, either at the prefiling stage or later, need not be a separate piece of testimony, but could be incorporated into a discrete section of a witness’s testimony.

## VI. CONCLUSION

The initial round of comments highlights certain aspects of the proposed N-Case rulemaking that warrant the Commission’s renewed attention for the purpose of clarification, in some instances, and for potential revision in other instances. In particular, legitimate concerns have been raised about the numerical limit on interrogatories, including a perhaps unintended impact on followup interrogatories and a potential for abuse. It is consistent with the public interest for the Commission to address these concerns and to consider whether its objectives can be achieved via alternatives.

The Public Representative also encourages the Commission to consider whether its proposed schedule can accommodate at least limited relief for participants and minimize resort to rote, time-consuming motion practice related to requests for extensions or late responses.

The initial round of comments indicates that certain other clarifications of the rules might be useful. To the extent the Commission concludes that resolving these

matters would foreclose timely issuance of a final rule, it might consider the approach used in the recent "Price Cap" rulemaking, where decisions on some rules were postponed. See Docket No. RM2013-2. In addition, for unresolved or controversial matters, consideration could be given to issuing a set of special rules in any N-Case filed prior to adoption of a comprehensive set of final rules.

## CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing document online in accordance with the Commission's Rules of Practice.



Patricia A. Gallagher  
Public Representative

August 28, 2013  
Washington, DC

Seventy-two Members are present, not a quorum. The Clerk will call the roll. The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 177]

Adair	Fulton, Tenn.	Ottlinger
Ashley	Gaydos	Patman
Baring	Gilbert	Pelly
Bell, Calif.	Hall	Pepper
Bray	Hanna	Pollock
Brock	Hébert	Powell
Bush	Holifield	Roid, N.Y.
Carey	Hosmer	Rivers
Cederberg	King	Rooney, N.Y.
Celler	Kirwan	Rooney, Pa.
Chamberlain	Leggett	Roudebush
Clark	Long, Md.	Schwengel
Clay	McCarthy	Smith, Calif.
Cohelan	McCulloch	Springer
Cowger	McEwen	Staggers
Cramer	McMillan	Talcott
Culver	Meskill	Ullman
Daddario	Mikva	Welcker
Daniels, N.J.	Miller, Calif.	Wilson,
Dawson	Murphy, N.Y.	Charles H.
Dent	Myers	Zion
Erlenborn	Nedzi	
Evins, Tenn.	O'Neal, Ga.	

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. PRICE of Illinois, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, H.R. 17070, and finding itself without a quorum, he had directed the roll to be called, when 363 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The gentleman from Texas (Mr. WRIGHT) is recognized for 5 minutes.

Mr. WRIGHT. Mr. Chairman, this amendment is the essence of simplicity. It may be the best and most direct way for the House to resolve the principal problem that it wants to resolve, without having to accept a lot of unacceptable provisions that appear in both the committee bill and the Udall administration substitute.

This amendment would strike everything after the enacting clause and insert in lieu thereof two very simple and straightforward provisions.

First of all, it would increase the pay of everyone employed by the Post Office Department by 8 percent.

Second, it would provide that following the enactment of this act, any person who participates in an illegal strike against the Post Office Department of the United States shall thereby forfeit his position of Federal employment and shall thereafter be ineligible for employment or reemployment by the Post Office.

Let us just face the facts.

Mr. HALEY. Mr. Chairman, will the gentleman yield?

Mr. WRIGHT. I yield to my friend, the gentleman from Florida.

Mr. HALEY. That is the law now, is it not, if it were enforced?

Mr. WRIGHT. I will respond to the gentleman that there is in the law a stipulation that anyone striking against the Government may be required to forfeit his rights of employment, but it is my impression that present law does not make this forfeiture mandatory.

Mr. HALEY. I thank the gentleman. Mr. WRIGHT. Quite obviously, many

#### POSTAL REORGANIZATION AND SALARY ADJUSTMENT ACT OF 1970

Mr. DULSKI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 17070) to improve and modernize the postal service, to reorganize the Post Office Department, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from New York.

The motion was agreed to.

#### IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 17070, with Mr. PRICE of Illinois in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday, the Clerk had read through the first section ending on page 156, line 14, of the committee substitute amendment.

#### AMENDMENT OFFERED BY MR. WRIGHT

Mr. WRIGHT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WRIGHT: Strike out all after the enacting clause and insert in lieu thereof the following:

"Sec. 1. The compensation for each person employed by the Post Office Department is hereby increased by 8 per centum per annum.

"Sec. 2. Any person who, being an employee of the Post Office Department, shall participate in any illegal strike against the Post Office Department following the date of enactment of this Act, shall forfeit his employment by such act and shall thereafter be ineligible for employment or reemployment by the Post Office Department.

The CHAIRMAN. The gentleman from Texas (Mr. WRIGHT) is recognized.

Mr. KAZEN. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

fairness to the parties. To this end the Board is specifically authorized (but without limitation) to adopt rules which provide for—

"(i) the advance submission of written direct testimony;

"(ii) the conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;

"(iii) discovery both from the Postal Service and the parties to the proceedings;

"(iv) limitation of testimony; and

"(v) the conduct of entire proceedings off the record with the consent of the parties.

"(e) The Chairman shall have the administrative responsibility for assigning the business of the Board to the various Board members and to members of the staff. The Board members may conduct proceedings or otherwise exercise their functions singly or en banc as the Chairman, after consultation with the other commissioners, shall determine. All final acts of the Rate Board shall be by a majority vote thereof.

"(f) The provisions of title 5 concerning hearing examiners shall apply to Board members and to the duties of the Commission and the Civil Service Commission with respect to Board members except as inconsistent with this chapter.

"§ 1252. Proposed changes in rates and classifications

"(a) Except as provided in subsection (c) of this section, the Postal Service shall give general notice of proposed change in rates, charges, fees, the classification of mail matter or mail users, and the postal rate structure or design by publishing its proposals therefor in the Federal Register not less than thirty days prior to the date on which it is proposed to adopt such changes. It shall also file the proposed changes with the Rate Board in such form and manner as the Board may prescribe. The notice published in the Federal Register shall state briefly—

"(1) the proposed change;

"(2) the reasons therefor;

"(3) the earliest date on which the Postal Service proposes to adopt the change;

"(4) that interested parties may file objections thereto or a request for a hearing thereon with the commissioners within thirty days after the date of publication of the notice in the Federal Register or such longer period as the notice may prescribe; and

"(5) the place and manner which the Board has fixed for filings with it.

"(b) If no party at interest files a timely objection to a proposed change or a request for a hearing thereon, the Board shall forward the proposed change to the Commission on Postal Rates and Revenues without opinion unless the presidentially appointed Commissioners request to the contrary.

"(c) The provisions of this chapter do not apply to changes in the fees or rates of exchange for international money orders and similar instruments or to changes in international postal rates adopted pursuant to section 405 of this title.

"§ 1253. Proceedings and recommended decisions by Postal Rate Board

"(a) Pursuant to sections 556 and 557 of title 5, the Rate Board shall conduct public hearings in all cases instituted under section 1252(a) of this title in which a party at interest files timely notice with the Rate Board that he desires to be heard.

"(b) The Board shall compile a record consisting of:

"(1) the proposed change and supporting material submitted by the Postal Service;

"(2) the oral testimony, if any, on behalf of the Postal Service, and by or on behalf of any party at interest;

"(3) the written submission, if any, on

behalf of the Postal Service and by or on behalf of any party at interest; and

"(4) such other material as the Board Members deem appropriate.

"(c) After consideration of the record, the Board shall render an initial decision to the presidentially appointed Commissioners stating whether in the opinion of the Rate Board the proposed change conforms to the rate policies and other provisions of this title and giving its reasons therefor.

"(d) In the event the Board does not complete its proceedings within ninety days after the notice of proposed changes is filed with it, or in the event that judicial proceedings are instituted under section 1257 of this title, the Postal Service upon thirty days' notice in the Federal Register may put a proposed change into effect temporarily. The interim changes will be effective for a period of not longer than thirty days after the Rate Board has rendered its initial decision to the presidentially appointed Commissioners and the period the change may be before Congress pursuant to section 1254 of this title.

"§ 1254. Final decisions

"(a) The presidentially appointed Commissioners, acting on behalf of the Postal Service, shall make and publish in the Federal Register a final decision on the proposed change in light of the recommended decision of the Rate Board and the record of the proceedings. They may reject the proposed change or they may adopt it—

"(1) as published in the Federal Register pursuant to section 1252 of this title; or

"(2) as proposed in the recommended decision of the Rate Board; or

"(3) with such modifications as they find are supported by the record of the proceedings.

"(b) The Commission, except as to changes enumerated in subsection (m) of this section, shall transmit to the Congress the final decision adopting a change in any proceeding instituted pursuant to section 1252(a) of this title. The Commission shall transmit the decision to both Houses of the Congress on the same day and to each House while it is in session and shall transmit with the final decision the recommended decision of the Rate Board together with the record of the proceedings.

"(c) The change contained in a final decision transmitted to the Congress pursuant to subsection (b) of this section shall become final at the end of the first period of ninety calendar days of continuous session of the Congress after the date on which the decision is transmitted unless, between the date of transmittal and the end of the ninety-day period, either House adopts a resolution disapproving the change. The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety-day period.

"(d) Subsections (e)–(k) of this section are enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"(e) If the committee to which a resolu-

tion with respect to a recommendation has been referred has not reported it at the end of thirty calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same recommendation which has been referred to the committee.

"(f) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(g) If the motion to discharge is agreed to, or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same recommendation.

"(h) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a recommendation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(i) Debate on the resolution shall be limited to not more than four hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

"(j) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to a recommendation, and motions to proceed to the consideration of other business, shall be decided without debate.

"(k) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a recommendation shall be decided without debate.

"(l) The final decision may include a provision that the change shall become effective at a time later than the date on which the decision becomes final pursuant to the foregoing provisions of this section.

"(m) Rate changes required by section 1202(c) of this title and rate changes for such special services as the Postal Service may provide, including special delivery, collect on delivery, insurance, registered and certified mail, return receipts, stamped envelopes, and box rents, and similar special or nonpostal services shall become final as provided in the final decision of the Postal Service in accordance with subsections (a) and (1) of this section.

"§ 1255. Service changes

"(a) Except as provided in subsection (d) of this section the Commission shall give public notice of a proposed change in the type, quality, terms, or conditions of any services provided by the Postal Service which substantially affects a postal service provided to users on a nationwide or nearly nationwide basis and which does not involve a proposed change subject to sections 1252–



1254 of this title. Public notice shall be given by publishing a notice of the proposed change in the Federal Register. The notice shall state briefly—

- "(1) the proposed change;
- "(2) the reasons therefor;
- "(3) the earliest date on which the Postal Service proposes to adopt the change;
- "(4) that interested parties may participate in the proceedings through submission for written material to the Rate Board with opportunity for oral presentation as the Rate Board may determine; and
- "(5) the time, place, and manner which the Rate Board has fixed for submissions to it.

"(b) Except as otherwise provided in this section, proposals for service changes shall be considered as proposed rules and the Rate Board shall be considered 'the agency' for purposes of sections 551-559 of title 5. The Board shall compile a record consisting of—

- "(1) the proposed change and supporting material submitted by the Postal Service;
- "(2) the oral testimony, if any, on behalf of the Postal Service, and by or on behalf of any party at interest;
- "(3) the written submissions, if any, on behalf of the Postal Service, and by or on behalf of any party at interest; and
- "(4) such other material as the Postal Service deems appropriate.

"(c) After consideration of the record, the Rate Board shall render an initial decision as to whether the proposed change, either in its original form or in a modified form, is consistent with the policies of this title. The initial decision shall become the final decision of the Postal Service unless within such time as the Commission establishes by general rule, the presidentially appointed Commissioners modify the tentative decision in the light of record or revoke the proposal.

"(d) Whenever the Postal Service proposes a change in the type, quality, terms, or conditions of service which substantially and adversely affects the users of such service but on less than a nationwide or nearly nationwide basis, the Postal Service shall—

- "(1) comply with the provisions of subsections (a) through (c) of this section; or
- "(ii) comply with rules, regulations, or procedures established pursuant to subsections (a) through (c) of this section which shall include the publication of a notice designed to inform the affected users of the proposed changes and the opportunity for such users to present their objections.

"(e) Whenever the Postal Service finds that an emergency exists which does not permit sufficient time for the procedures prescribed in subsections (a) through (d) of this section, the Postal Service contemporaneously with, or subsequent to, publication in the Federal Register of the notice of a proposed change, may adopt and publish in the Federal Register a temporary change which shall become effective upon publication in the Federal Register or such later date as may be prescribed therein. A change adopted in accordance with this subsection shall remain in effect until proceedings pursuant to subsection (a) through (d) of this section have been completed, or for such shorter period as the Postal Service may fix.

#### "§ 1256. Rate and service complaints

"Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or who believe that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Rate Board in such form and in such manner as the Board may prescribe. The Board may in its discretion hold hearings on such complaint. If, after such hearings, the Board determines the complaint to be justified, it shall, if a matter covered by section 1252 of this chapter is involved, recommend to the Commission that the Postal Service pro-

pose an appropriate change. The Postal Service shall propose such a change and such change shall proceed as if proposed initially by the Commission. If a matter not covered by section 1252 of this chapter is involved, and the Rate Board members after hearing find the complaint to be justified, they shall render a public report thereon to the presidentially appointed Commissioners, who shall take such action as they deem appropriate.

#### "§ 1257. Judicial review

"(a) Any final decision of the Postal Service pursuant to section 1254 or 1255 of this title and any final decision of the Rate Board pursuant to section 1256 of this title shall be subject to judicial review. Review shall be in the manner prescribed in chapter 7 of title 5 and chapter 158 and section 2112 of title 28 except as otherwise provided in this section. Such review shall be confined to holding unlawful and setting aside a final decision which the petitioner has shown to be—

- "(i) contrary to constitutional right, power, privilege, or immunity;
- "(ii) in excess of statutory jurisdiction, authority, or limitations; or
- "(iii) without observance of procedure required by law or by the rules promulgated by the commissioners pursuant to this chapter.

The court shall not consider any objection which was not urged in the proceedings of the Postal Service unless there were reasonable grounds for failure to do so.

"(b) Review may be had only by a party to the proceedings who has—

- "(i) participated in the proceedings in accordance with section 1253 of this title;
- "(ii) participated in the proceedings in accordance with section 1255(a)(4) of this title; or
- "(iii) filed a complaint pursuant to section 1256 of this title.

"(c) Petitions for review shall be filed within fifteen days after the publication of notice of the final decision. After the expiration of said fifteen days, a petition may be filed only by leave of court upon a showing of reasonable cause for failure to file such petition. The action shall be against the Postal Service and not against the United States.

"(d) Upon the filing of a petition for review of a final decision under section 1254(a) of this title, the Commission shall not transmit to the Congress its final decision pursuant to section 1254(b) until judicial proceedings under this section are completed. All judicial proceedings shall be made preferred causes and shall be expedited in every way.

"(e) Temporary changes under section 1253(d) and emergency changes under section 1255(e) of this title may not be affected in any way by a court. The thirty-day period after the Board's initial decision referred to in section 1253 shall be extended to include the entire period of judicial proceedings under this section. Final decisions under section 1255 of this title may not be stayed by any court pending review.

"(f) Except as provided under section 1251(d)(1) of this title, no court shall have jurisdiction to review a final decision made by the Postal Service pursuant to this chapter in any manner other than as provided in this section.

#### "Chapter 14.—PRIVATE CARRIAGE OF LETTERS

"Sec.

"1401. Letters carried out of the mail.

"1402. Foreign letters out of the mail.

"1403. Searches authorized.

"1404. Seizing and detaining letters.

"1405. Searching vessels for letters.

"1406. Disposition of seized mail.

"§ 1401. Letters carried out of the mail

"(a) A letter may be carried out of the mails when—

- "(1) it is enclosed in an envelope;

"(2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;

"(3) the envelope is properly addressed;

"(4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;

"(5) any stamps on the envelope are canceled in ink by the sender; and

"(6) the date of the letter, or its transmission or receipt by the carrier is endorsed on the envelope in ink.

"(b) The Postal Service may suspend the operation of any part of this section upon any mail route where the public interest requires the suspension.

#### "§ 1402. Foreign letters out of the mail

"(a) Except as provided in section 1401 of this title the master of a vessel departing from the United States for foreign ports may not receive on board or transport any letter which originated in the United States that—

"(1) has not been regularly received from a United States post office; or

"(2) does not relate to the cargo of the vessel.

"(b) The officer of the port empowered to grant clearances shall require from the master of such a vessel, as a condition of clearance, an oath that he does not have under his care or control, and will not receive or transport, any letter contrary to the provisions of this section.

"(c) Except as provided in section 1699 of title 18, the master of a vessel arriving at a port of the United States carrying letters not regularly in the mails shall deposit them in the post office at the port of arrival.

#### "§ 1403. Searches authorized

"The Postmaster General, by letter of authority over his signature, may authorize any postal inspector or other officer of the Postal Service to make searches for mailable matter transported in violation of law. When the authorized officer has reason to believe the mailable matter transported contrary to law may be found therein, he may open and search any—

"(1) vehicle passing, or having lately passed, from a place at which there is a post office of the United States;

"(2) article being, or having lately been, in the vehicle;

"(3) store or office, other than a dwelling house, used or occupied by a common carrier or transportation company, in which an article may be contained.

#### "§ 1404. Seizing and detaining letters

"A postal inspector, customs officer, or United States marshal or his deputy, may seize at any time letters and bags, packets or parcels containing letters which are being carried contrary to law on board any vessel or on any post road. The officer who makes the seizure shall convey the articles seized to the nearest post office; or by direction of the Postal Service or the Secretary of the Treasury, he may detain them until two months after the final determination of all suits and proceedings which may be brought within six months after the seizure against any person for sending or carrying the letters.

#### "§ 1405. Searching vessels for letters

"A postal inspector when instructed by the Postal Service to make examinations and seizures and any customs officer without special instructions shall search vessels for letters which may be on board, or which may have been conveyed contrary to law.

#### "§ 1406. Disposition of seized mail

"Every package or parcel seized by a postal inspector, customs officer, or United States marshal or his deputies, in which a letter is unlawfully concealed, shall be forfeited to the United States. The same proceedings may be used to enforce forfeitures as are authorized in respect to goods, wares, and merchandise forfeited for violation of the revenue laws. Laws for the benefit and protection of customs officers making seizures for



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[Senate Judiciary Committee Print, June 1945](#)

### Reports

[House Report No. 1980 \[May 3, 1946\]](#)

[Senate Report No. 752 \[November 19, 1945\]](#)

### Hearings and Related Documents

Administrative Procedure, hearings before the Committee on the Judiciary, House of Representatives, 79th Congress, 1st Session, on the subject of federal administrative procedure and on the following bills: H.R. 184, H.R. 339, H.R. 1117, H.R. 1203, H.R. 1206, and H.R. 2602, June 21, 25 and 26, 1945

Administrative Procedure Act, proceedings in the House of Representatives, May 24 and 25, 1946 and proceedings in the Senate of the United States, March 12 and May 27, 1946

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